

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION**

DATE: January 5, 2018

**JUDGE:
JOHN D. LOVE**

REPORTER: Shea Sloan

LAW CLERK: Hannah Henkel

COURTROOM DEPUTY: Sharon Baum

REALTIME DATA LLC	CASE NO: 6:16cv961 SECOND PRETRIAL CONFERENCE
V	
RACKSPACE US, INC., ET AL.	
ATTORNEYS FOR PLAINTIFF	ATTORNEY FOR DEFENDANTS
See attached sign in sheet	See attached sign in sheet

On this day, came the parties by their attorneys and the following proceedings were had:

OPEN: 9:02

ADJOURN: 10:45

TIME:	MINUTES:
9:02	Case called. Parties announced they are here and ready. Judge states we will continue today with second pretrial. As to exhibits objections I want to take those up first. Any other disputes that have been resolved we do not have to take up today.
	Mr. Kroeger responds.
	Ms. Mayer responds.
	Judge states we will start with objections to exhibits, start with DX 6, 161 and 182.
9:04	Mr. Chung begins argument.
9:07	Mr. Jacobs responds.
	Judge states objection to exhibit as admission into record is sustained but may be used as a demonstrative when testifying.
9:12	Mr. Chung responds.
	Mr. Jacobs responds.

TIME:	MINUTES:
	Judge states the expert can testify on this.
	Mr. Jacobs responds again.
9:14	Mr. Chung further responds.
	Judge makes comments. Next objections are to DX 33-36a, 46, 46a, 47-55, 121-122.
9:15	Mr. Kroeger responds that they withdraw objection to DX 33a and to DX 207 and 208. Next moves on to DX 34a, 204 and 205.
	Mr. Wiener responds on DX 34a, 204 and 205.
	Judge states DX 34a, 204 and 205 are now withdrawn and may be used as demonstratives.
	Mr. Kroeger begins argument on DX 35b, 35c, 206.
9:18	Mr. Wiener responds on DX 35b, 35c, and 206.
	Judge states these are classic demonstratives and that is what they can be used for, DX 35b, 35c and 206.
	Mr. Kroeger begins argument of DX 209.
	Mr. Wiener responds we are willing to redact.
9:20	Judge states as agreed with redactions.
	Mr. Kroeger begins argument on DX 47-55.
	Judge states documents created in the course of litigation do not come into evidence, DX 47-55 are sustained.
	Mr. Kroeger begins argument on DX 121, I believe 122 has been withdrawn.
9:22	Mr. Wiener responds.
	Judge makes rulings. Next category I have is DX 14-18.
9:22	Mr. Wang begins argument.
	Mr. Wiener responds.
	Judge states objection to DX 14-18 are sustained.

TIME:	MINUTES:
	Mr. Wang responds.
	Judge moves on to DX 64, 196-203.
	Mr. Kroeger begins argument.
9:28	Mr. Wiener responds.
	Judge asks question.
	Mr. Wiener responds.
	Judge sustains the objection to these DX 64, 196-203 is sustained.
	Mr. Wang responds.
	Judge makes additional comments. Next objection I have is to DX 68.
	Mr. Kroeger begins argument.
	Mr. Wiener responds.
	Judge states as to the unsigned affidavit, DX 68, the objection is sustained.
	Mr. Wiener responds.
	Judge directs that he is sustaining the objections to DX 15, 16, 125, 126, 127, 165 and 166.
	Mr. Kroeger makes additional comments.
	Judge moves on to DX 69-80.
9:35	Mr. Kroeger begins argument.
	Mr. Wiener responds.
	Mr. Kroeger responds.
	Mr. Wiener responds.
	Judge states objection to admission of exhibits into evidence is sustained.

TIME:	MINUTES:
9:38	Mr. Wang begins argument on DX 97, 128 and 129.
	Mr. Wiener responds.
	Judge sustains objection to admittance but they can be used for impeachment. DX 106 -108 are withdrawn. Next category are 127, 130-138.
	Mr. Wang begins argument.
9:39	Ms. Mayer responds.
	Judge states DX 127, 130-138 are sustained, next category is DX 141, 146, 165-181.
	Mr. Wang begins argument.
	Ms. Mayer responds.
9:42	Mr. Wang responds.
	Judge makes additional comments on Cain and Williams.
	Mr. Wang begins argument of DX 165-181.
9:46	Ms. Mayer responds.
	Mr. Wang responds.
	Judge sustains the objection to DX 165-181 with clarifying comments. The next category is DX 147.
	Mr. Kroeger begins argument.
	Mr. Wiener responds.
	Judge overrules the objections to DX 147. Moving on to DX 183-188 and 149.
	Mr. Kroeger begins argument.
9:50	Ms. Mayer responds.
	Judge states DX 149 is withdrawn, the objection to DX 183-188 are sustained. Next move on to DX 160.
	Mr. Kroeger begins argument.

TIME:	MINUTES:
	Ms. Mayer responds.
	Judge sustains the objection to DX 160. Moving on to PX 12-18.
9:54	Ms. Mayer begins argument.
	Mr. Wang begins response to PX 17 and 18.
	Ms. Mayer continues argument.
	Judge states on PX 17 and 18 I am going to overrule the objection.
	Mr. Wang makes additional comments.
	Judge asks additional question.
	Mr. Wang responds.
10:04	Judge makes comments and further discusses hearsay objection.
	Mr. Wang responds they are willing to redact.
	Judge makes additional comment and ruling.
10:06	Ms. Mayer responds.
	Judge is going to overrule on PX 12, as to PX 13-16 is there anything further?
	Mr. Wang begins argument on PX 13-16.
10:08	Judge asks question. Judge states the objection to exhibits PX 13-16 are overruled, with further comments.
	Mr. Wiener begins argument on NetApp documents that are hearsay.
	Judge is going to overrule objections in that form. We will move on to PX 159, 162, 224-230.
	Mr. Kroeger responds and there is agreement that they will withdraw their objection.
	Judge states next group is PX 240-41, 236 and 21.
	Ms. Mayer begins argument.

TIME:	MINUTES:
	Judge asks additional question.
	Ms. Mayer continues argument that they have reached stipulation to documents that are on their website.
	Mr. Kroeger responds.
	Ms. Mayer responds if it is NetApp sponsored we are not objecting to it.
	Mr. Kroeger continues.
	Ms. Mayer responds.
10:15	Judge makes comments.
	Ms. Mayer further responds.
10:17	Judge asks additional question of Mr. Kroeger.
	Mr. Kroeger responds.
	Judge states objection is overruled subject to authentication at trial.
	Mr. Kroeger continues argument.
	Ms. Mayer responds.
	Judge asks additional question.
	Ms. Mayer responds.
	Mr. Kroeger further responds.
10:20	Ms. Mayer responds.
	Mr. Kroeger responds.
	Judge states objection to PX 21 is overruled. We are moving on to source code.
	Ms. Mayer states they have reached an agreement on source code so we have withdrawn those exhibits.
	Judge moves on to next group of documents.

TIME:	MINUTES:
10:22	Ms. Mayer begins argument.
	Judge overrules the objection, next moves on to PX 198.
	Mr. Wiener begins argument.
	Judge raises concerns and asks question.
10:25	Mr. Kroeger responds.
	Mr. Wiener responds.
	Mr. Kroeger further responds.
	Judge overrules the objection to PX 198. Moving on to PX 146, 234 and 235.
	Ms. Mayer begins argument.
	Mr. Kroeger responds.
	Ms. Mayer responds.
10:31	Judge makes further comments.
	Ms. Mayer responds.
	Mr. Kroeger responds.
	Ms. Mayer responds.
	Judge asks question of Ms. Mayer.
	Ms. Mayer responds.
10:36	Judge states experts can talk about their evaluations and makes further comments. At this point I am sustaining objections to the admission of what is before me of PX 146, 234 and 235.
10:38	Ms. Mayer further responds.
	Mr. Kroeger responds.
10:39	Ms. Mayer makes additional comments.

TIME:	MINUTES:
	Mr. Wiener withdraw objections
10:40	Judge asks if there are objections to deposition designations.
	Mr. Kroeger responds.
	Ms. Mayer responds.
10:41	Judge does not know what Judge Schroeder's availability is for a hearing on deposition designations. Judge informs parties he believes they will have no more than a week for trial and they should receive a time limit order shortly. Judge makes clarifying comments on preadmitted exhibit lists, demonstratives and designated deposition testimony.
10:45	Being nothing further, we are adjourned.